

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 18802 of 2004

Between:

Md. Anwar Basha, S/o. Md. Ghouse Mohiddin, President,
Darga Welfare Committee, R/o. A.S. Peta, Nellore District.

..... PETITIONER

AND

1. The Administrator of Anumasamudrampeta Mosque & Tomb Estate - Cum
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Additional Senior Civil Judge, Nellore, Nellore District.

- 2 Md. Sayed Aqueel, S/o. Not Known, Major,
H.No. 9-487/B/21, Minor Colony, Toli Chowki, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to pass an order or direction or Writ under Article 226 of the Constitution of India, more particularly one in the nature of Writ of Mandamus declaring the action of the first respondent in passing the order in Dis.No.71 dated 10-9-2004 appointing the second respondent as trustee of Anumasamudrampeta Mosque & Tomb Estate as bad, illegal, unjust and contrary to the scheme prepared in O.S.No.150 of 1913 on the file of the learned Subordinate Judge, Nellore and consequently direct the first respondent to appoint the petitioner as trustee of Anumasamudrampeta Mosque & Tomb Estate.

Counsel for the Petitioner:MR.C.DAMODAR REDDY

Counsel for the Respondent No.1 : Mr. C.N.Rao

Counsel for the Respondent No.2 : Mr. Mirza Nissar Ahmed Baig

The Court made the following :

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ORDER :

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The Writ Petitioner questions the proceedings of the Administrator-cum-Additional Senior Civil Judge, Nellore made in Order Dis.No.71, dated-10-09-2004 in appointing the second respondent herein as managing trustee of Anumasamudrampeta Mosque and Tomb Estate, as bad and illegal and contrary to the scheme prepared in O.S.No.50 of 1913 on the file of the Subordiante Judge, Nellore and to direct the first respondent to appoint the petitioner herein as trustee of the said Mosque and Tomb Estate.

By the aforesaid proceedings, the first respondent passed the order stating that the selections were held on 08-09-2004 in which the second respondent has been selected for the appointment as managing trustee of A.S. Peta Mosque & Tomb Estate, A.S.Peta. The second respondent has been appointed as Managing Trustee of A.S. Peta Mosque and Tomb Estate subject to the conditions of the Scheme, dated-25-04-1918 passed in O.S.No.50 of 1913 and Rules framed thereunder tentatively for a period of six months from the date of assumption of charge. His appointment is purely temporary and his services are liable to be terminated at any time without notice, if his services are found unsatisfactory. If his services are found satisfactory during the said period of six months, he will be considered for extension, pursuant to the said Scheme Rules. The second respondent further directed to furnish security for Rs.20,000/- before he assumes charge of the office of the managing trustee, A.S. Peta Mosque and Tomb Estate from the present in-charge trustee i.e. Peish-Imam and the said order terminates the services of Peish-Imam as incharge trustee.

It is the case of the petitioner that a Division Bench of the Madras High Court in A.S.No.200 of 1917 has directed the Subordinate Judge, Nellore to formulate a scheme to manage the said properties of the mosque and accordingly the learned Subordinate Judge, Nellore framed a Scheme for appointment of trustee and also framed certain Rules for such appointment and the same was approved by the Madras High Court.

As per the Scheme, a trustee has to be appointed and the person should be able to read and write Urdu and Telugu and he must be a Sunni and in making selection, preference shall be given to students and thereafter to those who are inhabitants of Nellore District. It is further stated that the first respondent has appointed the second respondent as a managing trustee contrary to the said scheme and admittedly, the second respondent is not a resident of Nellore, but, he is resident of Hyderabad; whereas, the petitioner is an elected President of the said Committee in the year 1982 and since then he has been rendering services to the said Mosque through the welfare committee and all the members of the Dargah Committee have been rendering services to the said mosque voluntarily. It is stated that for certain irregularities committed and for

mis-appropriation of funds by the trustees, action has been taken by the first respondent by appointing the petitioner as President of the Dargah Welfare Committee to manage the affairs of the mosque and his services were appreciated by Dargah Committee. To appoint a regular managing trustee, the first respondent issued a notification, which was published in Eenadu newspaper on 26.06.2004 prescribing certain qualifications, and the petitioner also submitted his application on 29.06.2004 within the stipulated time. But, the first respondent appointed the second respondent contrary to the terms and conditions of the scheme and therefore, the impugned order is illegal and unsustainable.

This Court while admitting the Writ Petition on 22.12.2004 based on the submissions made by the petitioner that the second respondent does not hold the requisite qualifications and that he is not a Sunni and as there was no counter filed pursuant to the notice issued before admission, the said order was suspended and the first respondent was directed to make alternative arrangements.

Learned counsel appearing for the second respondent submits that admittedly the second respondent is not a resident of Nellore but he is resident of Hyderabad. The qualifications and disqualifications for appointment to the office of the Trustee or of the Sajjadanashin are as per Rule 1, which is extracted below:

- a. *who is not a major;*
- b. *who has been convicted of any criminal offence implying moral turpitude or who has been removed by any court of competent jurisdiction from this office for any reason whatsoever or from any other religious office held anywhere else for defect of character;*
- c. *who is an uncertified bankrupt or un-discharged insolvent;*
- d. *who is a lunatic or an idiot or who is suffering for total blindness, total deafness or dumbness, and advance leprosy or paralyse is of a such a nature as to unfit him for work or who is habitual drunkard or whose character is so bad as is likely in the opinion of the court to bring the administration of the institution into contempt.*

The trustee should be able to read and write Urdu and Telugu. The trustee unless the court thinks otherwise shall ordinarily be appointed for a period of five years and shall be eligible for re-appointment.

It is the case of the petitioner that he has no disqualification as mentioned under Rule 1 (a) to (d) of Sajjadanashin. As per the proviso to Clause (d) of Rule 1, a trustee should be able to read and write Urdu and Telugu. But, there is no residential qualification prescribed in the Rules that he should be a native of Nellore District only. Therefore, ultimately a competent person is eligible to be appointed for the post of a trustee. It is further stated that as per Clause 2 of the Scheme, no doubt a person should be Mohammedan following the Sunni School of Theology and Law. He submits that he is a follower of Sunni School of Theology and Law and he belongs to Sunni and therefore there is no truth in any of the allegations made by the second respondent that he is not a Sunni.

I have perused the Scheme, Rules and the Appeal Suit No.200 of 1917, which

was approved by the Madras High Court.

As per Clause 1 of the Scheme, the word Court shall mean the District Court of Nellore or such court of Subordinate Judge at Nellore to which the District Court may delegate its powers under the Scheme. It is stated that the District Court delegated the powers to the Subordinate Judge. It is stated that as per Para 12 of the Scheme any surplus left after meeting the expenses specified in paragraphs 8, 9 and 10 shall be formed into a fund called “the fund for the support of poor Mohammedan students”, out of which stipends, scholarships, free studentships and similar allowances shall be granted to promising but poor Mohammedan students. In making the selection, preference should be given to students answering the above description, if any, available among the descendants of Ghulam Nakshband Saheb, the second Sajjadanashin, next to such students belong to Annamasamudrampeta village, and thereafter to those who are inhabitants of the Nellore District. Amounts will be fixed and the scholars will be elected from time to time by the Court after such inquiry as it thinks fit.

By any stretch of imagination of the reading of the paragraph 12 of the Scheme, it cannot be presumed that the residential qualifications are prescribed for appointing the managing trustee who hails from Nellore District only. Clause 12 of the Scheme only deals with meeting the surplus funds, among giving certain preferences, but it has nothing to do with the residential qualification to appoint any managing trustee.

As per Rule 19, any two persons having an interest in the trust or any two holders of allowances may with the sanction of the Advocate General or the Collector of Nellore apply by petition to the Court for the removal of the trustees, the Sajjadanashin or the Peish Imam from the office or for such direction and orders as may be desirable in the interest of the institution. The Court shall thereupon after such notice to the person complained against and to such other persons as it may consider necessary and after making due enquiry in that behalf pass such orders as it may deems fit. As per Rule 20, the Court shall fill up any vacancy caused by the registration, death or removal of the trustee, or the Peish Imam or the Sajjadanashin in default of a previous *bona fide* nomination by the Sajjadanashin in office as soon as possible after the occurrence of the vacancy.

The contention of the learned counsel for the petitioner is that the second respondent is not a Sunni and he is not a resident of Nellore and therefore the second respondent may be disqualified. I am of the opinion that there is no residential qualification prescribed either in any of the paragraphs in the Scheme or in any of the Rules. The second respondent vehemently asserts that he is a Sunni. Therefore, this disputed question cannot be decided in a Writ Petition. If the second respondent is not a Sunni, it is always open for the petitioner to file an application as contemplated under Rule 19 of the said Rules. There is an effective alternative remedy available to the petitioner under Rule 19 of the said Rules framed under O.S.No. 50 of 1913.

Therefore, I am of the opinion that the Writ Petition filed by the petitioner is misconceived inasmuch as there are no merits in the Writ Petition, and it is not maintainable and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed and the interim order granted earlier stands vacated. There shall be no order as to costs.

V. ESWARAIAH, J

Dated:01-03-2005

ccm

To:

1. The Administrator, Anumasamudrampeta Mosque & Tomb Estate-Cum-Additional Senior Civil Judge, Nellore, Nellore District.
2. Two CD copies